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SUPERINTENDENT'S OFFICE

The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

September 17, 2019
SPR19/1541

Dr. John A. Provost, Ed.D.
Superintendent
Northampton Public Schools
212 Main Street 2nd Floor
Northampton, MA 01060

Dear Dr. Provost:

I have received the petition of Greta Jochem of the *Daily Hampshire Gazette* appealing the response of the Northampton Public Schools (School) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Ms. Jochem requested correspondence between the district and The Loomis Chaffee School along with a resume and letters of recommendation.

The School provided a response on August 1, 2019 citing Exemption (c) to the Public Records Law for withholding the requested records. Ms. Jochem appealed the School's response to this office on August 2, 2019. The School provided a supplemental response on August 12, 2019.

In an August 16, 2019 determination I found that in order to facilitate a determination as to the applicability of the School's exemption claims, the School must provide this office an un-redacted copy of the responsive records for *in camera* inspection without delay. The School provided these records and I would like to thank it for its cooperation.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist.

Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record. G. L. c. 66, § 10(b)(iv).

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

In camera review

Exemption (c)

The School redacted portions of responsive records under Exemption (c) of the Public Records Law.

Exemption (c) permits the withholding of:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.

G. L. c. 4, § 7(26)(c).

First clause

Exemption (c) contains two distinct and independent clauses, each requiring its own analysis. Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 432-33 (1983). The first clause creates a categorical exemption for personnel information that relates to an identifiable individual and is of a "personal nature." Id. at 434. Massachusetts courts have found that "core categories of personnel information that are 'useful in making employment decisions regarding an employee'" may be withheld from disclosure. Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1, 5 (2003). For example, "employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information pertaining to a particular employee," may be withheld pursuant to the first clause of Exemption (c). Wakefield Teachers Ass'n v. School Comm., 431 Mass. 792, 798 (2000). The courts have also discussed specific categories of records that may be redacted under the first clause. See Globe Newspaper Co. v. Exec. Office of Admin. and Finance, Suffolk Sup. No. 11-01184-A (June 14, 2013).

Second clause

Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Torres v. Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm'r of Real Property

Dep't, 380 Mass. 623, 625 (1980). Therefore, determinations must be made on a case by case basis.

This clause does not protect all data relating to specifically named individuals. Rather, there are factors to consider when assessing the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources. See People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 280, 292 (2017).

The types of personal information which the second clause of this exemption is designed to protect includes: marital status, paternity, substance abuse, government assistance, family disputes and reputation. Id. at 292 n. 13; see also Doe v. Registrar of Motor Vehicles, 26 Mass. App. Ct. 415, 427 (1988) (holding that a motor vehicle licensee has a privacy interest in disclosure of his social security number).

This clause requires a balancing test which provides that where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield. PETA, 477 Mass. at 291. The public has a recognized interest in knowing whether public servants are carrying out their duties in a law-abiding and efficient manner. Id. at 292.

In her August 2nd appeal Ms. Jochem asserts "the school district has failed to identify in sufficient detail what records it has in its possession for document requests 1-3, thus failing to meet the burden of specificity required under the commonwealth's public records law." In its August 12th response, the School cited Exemption (c) for the withholding of the requested correspondence, resume, and letters of recommendation.

November 30, 2017 Letter

Under Exemption (c), the School is withholding one record concerning the School and the Loomis Chafee School. Attorney Layla Taylor, responding on behalf of the School, indicates "[t]he record consists of a communication by Superintendent John Provost to the Loomis Chafee School seeking information regarding a workplace investigation into a complaint against one of the District's staff members. The letter is dated November 30, 2017." Attorney Taylor contends "[t]he School District's position is that this document-in its entirety-is exempt from disclosure because its contents contain the nature of the allegation and – even with names redacted – it would tend to identify the staff member involved in the workplace investigation and implicate that employee's privacy rights-including the employee's privacy interest in their reputation. Further, this letter was written in furtherance of a workplace investigation the purpose of which is to adduce facts that may be used in making employment decisions and decisions on whether mandated reporting to any outside licensing agencies is required."

Upon *in camera* review, I find the School has met its burden to show how the responsive letter dated November 30, 2017 constitutes one of "core categories of personnel information that

are ‘useful in making employment decisions regarding an employee’” that may be withheld under the personnel clause of Exemption (c). Globe Newspaper Co., 388 Mass. at 438 (the inquiry as to what constitutes identifying information regarding an individual . . . must be considered not only from the viewpoint of the public but also from the vantage of those who are familiar with the individual and his career).

This determination is based on an analysis of the School’s argument that the personnel clause of Exemption (c) is applicable to the record at issue. As described above, Exemption (c) contains two distinct and independent clauses, each requiring its own analysis. Globe Newspaper Co., 388 Mass. at 432-33. The second clause of Exemption (c) requires a balancing test which provides that where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield. See PETA, 477 Mass. at 291. The Supreme Judicial Court (SJC) found that the personnel clause of Exemption (c) is not subject to the same analysis as the second clause with respect to the weighing of the public interest. See Globe Newspaper Co., at 433-34 (finding that the first clause of Exemption (c) is not subject to the language of the modifying clause, including the balancing test, of the exemption).

Resume

With respect to the resume at issue, the School contends that the redactions made under Exemption (c) are “. . . the information about dates and places of prior employment, the narrative about the scope of work at prior employers and the dates and places of where [identified individual] went to school are the types of personnel record information contained on job application materials that case law has indicated are considered personnel record because the information is useful in making employment decisions.”

The question of whether professional vocational qualifications and training may be exempted from disclosure pursuant to Exemption (c) of the Public Records Law is well settled. Massachusetts Courts have consistently recognized the public’s interest in the qualifications of government employees. See John J. Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 863-64 (1975); Rotkiewicz v. Sadowsky, 431 Mass. 748, 753 (2000); Daniel Lynch v. News Group Boston, Inc., 1 Mass. L. Rep. 9, 4 (1993); Charles Mazetis v. The Enterprise Publishing Co., 22 Mass. L. Rep. 380, 10 (2007).

While the requested records or information pertaining to the employees’ work experience may be held in a personnel file, that does not render the information exempt as personnel records under Exemption (c). A personnel file or information “is not limited to nor does it extend to, all ‘files or information’ that are located physically in an individual employee’s personnel file.” Wakefield, 431 Mass. at 797 n. 13; see also Globe Newspaper Co., 388 Mass. at 435 (not every bit of information which might be found in a personnel or medical file is necessarily personal so as to fall within the exemption’s protection). The public has an interest in gauging whether an individual has the requisite education, training and work experience necessary for the particular position for which he or she was hired.

The public can reasonably expect the disclosure of qualifications of public employees. See Attorney Gen. v. School Comm. of Northampton, 375 Mass. 127, 130 (1978). Therefore, the education, employment history, academic achievements and qualifications are public information. Associated Gen. Contractor v. U.S. Envtl. Protection Agency, 488 F. Supp. 861, 863 (D.C. Nev. 1980). Such information is routinely presented in both professional and social settings. See Eskaton Monterey Hospital v. Myers, 184 Cal. Rptr. 840, 843 (1982).

As a result, I find it is unclear how these redactions fall within Exemption (c).

Letter of Recommendation

The School explained the withholding of letters of recommendation as the "letters of recommendation from her former employers contained in her personnel record were also redacted, in full, for the above-referenced reasons."

G. L. c. 66, § 3A

The Legislature has enacted G. L. c. 66, § 3A: Recommendations for employment submitted in support of candidates hired by the commonwealth; use of recommendation by hiring authority.

Section 3A states:

Recommendations for employment submitted in support of candidates who are hired by the commonwealth, or any political subdivision of the commonwealth, in the position to which the recommendations were applicable, shall be considered public records under section 7 of chapter 4 and this chapter; provided, however that this shall not apply to internal communications. Recommendations for employment submitted in support of candidates applying for employment by the commonwealth, or any political subdivision of the commonwealth, shall not be considered by a hiring authority until the applicant has met all other qualifications and requirements for the position to be filled; provided, however, that a hiring authority may, in accordance with said agency's regular practice for conducting reference checks, contact and speak with a reference provided to it by a candidate for employment, or contact and speak with any person who has submitted a written recommendation on behalf of a candidate for employment with said agency.

G. L. c. 66, § 3A.

The School is advised that to the extent that G. L. c. 66, § 3A applies to the employment references, those records would be subject to disclosure under the Public Records Law. The School is ordered to provide the requested references or a response explaining why G. L. c. 66, § 3A does not apply to these requested references.

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Conclusion

Accordingly, the School must provide a response to Ms. Jochem in a manner consistent with this order, the Public Records Law, and its Regulations within 10 business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,

Rebecca Murray
Rebecca S. Murray
Supervisor of Records

cc: Greta Jochem